IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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DURAMAX MARINE, LLC,)		03 SEP -5 PM 4: 51
Opposer,))		
V.)	Opposition No. 119,899	
R.W. FERNSTRUM & COMPANY,)) }		
Applicant.)		

APPLICANT'S OBJECTION TO OPPOSER'S REPLY BRIEF

Applicant R. W. Fernstrum & Company (hereinafter "Fernstrum"), through its undersigned attorneys, objects to the Reply Brief filed by Opposer Duramax Marine LLC (hereinafter "Duramax) in support of its motion for summary judgment on the ground that it comprises improper and unwarranted argument.

Trademark Rule 2.127(a) provides that the Board may, in its discretion, consider a reply brief in support of a motion. As a general rule, the Board finds that reply briefs have little persuasive value and are often a reargument of the points made in the made brief. *No Fear Rule Inc. v. Rule*, 54 U.S.P.Q.2d 1551, 1554 (T.T.A.B. 2000). "The presentation of one's arguments and authority should be presented thoroughly in the motion or the opposition brief thereto." *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 U.S.P.Q.2d 1719, 1720 n. 3 (T.T.A.B. 1989).

In the case *sub judice*, Duramax presents arguments and authority that should have been, but were not, presented in its motion (*e.g.*, in its Reply Brief, Duramax presents for the first time arguments and evidence regarding the *Morton-Norwich* elements of functionality and whether Fernstrum's mark is a stylized drawing or an accurate portrayal of its product). As a result, Duramax has, in effect, submitted a 34 page brief supporting its motion, rather than the 25 pages permitted under Board practice. Trademark Rule 2.127(a). Fernstrum is thereby

prejudiced by the actions of Duramax because Fernstrum could not address all of the arguments and authority asserted by Duramax.

In this case, equity and fairness demands that the Duramax Reply Brief be stricken.

R. W. FERNSTRUM & CO.

Date: September 4, 2003

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of September, 2003, a true and correct copy of the foregoing *APPLICANT'S OBJECTION TO OPPOSER'S REPLY BRIEF* was served via certified U.S. mail, return receipt requested, on:

D. Peter Hochberg, Esquire

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